

# FAQs

**SUBJECT: EMPLOYERS MUST PROVIDE MARKETPLACE NOTICE TO EMPLOYEES BY OCTOBER 1, 2013**

**DATE: 09/06/13**

Beginning January 1, 2014, individuals will have access to health insurance coverage through the new health insurance Marketplace, sometimes referred to as the Health Benefit Exchange. In Kentucky, the Marketplace is called **kynect**. Through **kynect**, individuals can shop, compare, and purchase health insurance coverage. Open enrollment for individuals desiring to purchase health insurance coverage through **kynect** begins October 1, 2013.

Section 1512 of the Affordable Care Act (ACA) creates a new section of the Fair Labor Standards Act (FLSA) that requires employers to provide a notice to employees regarding the health insurance coverage options available through the Marketplace. These FAQs provide guidance and answer questions you may have regarding the employers' Marketplace Notice requirements.

## The Marketplace

### What is the "Marketplace"?

In an effort to give individuals access to affordable, comprehensive health insurance coverage, the ACA established the Health Benefit Exchange or the "Marketplace." The Marketplace offers one-stop-shopping for health insurance coverage. Through the Marketplace, individuals can shop, compare, and apply for coverage. They can also apply for premium tax credits that can be used to reduce the cost of coverage.

## Kentucky's Marketplace

### Is there a Marketplace in Kentucky?

Yes. Each state has a Marketplace. In Kentucky, the Marketplace is called **kynect**.

### How can I contact kynect?

You may visit [kynect.ky.gov](http://kynect.ky.gov) for more information or contact **kynect** by phone at 1-855-4kynect.

## Marketplace Notice

### What is the Marketplace Notice requirement?

On May 8, 2013, The US Department of Labor (DOL) issued Technical Release No. 2013-02 providing guidance on the Notice to Employees of Coverage Options under the Fair Labor Standards Act §18B. The ACA added §18B of the FLSA and required an "applicable employer" to provide each employee notice regarding their insurance coverage options. In conjunction with the guidance, the DOL issued a model Notice that may be used by employers who offer a health plan to some or all employees.

You may review the Technical Release and the model Notice at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>.

### What are the required contents of the Notice?

The notice to inform employees of coverage options must:

- a. Inform the employee of the existence of the Marketplace including a description of the services provided by the Marketplace, and the manner in which the employee may contact the Marketplace to request assistance;
- b. Advise that the employee may be eligible for a premium tax credit under §36B of the IRC if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs and the employee purchases a qualified health plan through the Marketplace; and

- c. Advise that the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes if the employee purchases a qualified health plan through the Marketplace.

### **What is the purpose of the Marketplace Notice?**

The ACA established an individual mandate requiring applicable individuals to procure insurance for themselves and for their dependents. The Marketplace Notice advises employed individuals that health insurance coverage may be obtained through the Marketplace. The Notice also advises that an employee, who purchases insurance through the Marketplace, rather than purchasing insurance offered by the employer, may lose employer premium contributions. Lastly, the Notice advises employees that if the employer's coverage meets certain standards (affordable with a minimum value), the employee will not be eligible for premium tax credits through the Marketplace.

### **Will employees eligible for coverage through the Kentucky Employees' Health Plan (KEHP) be eligible for premium tax credits through the Marketplace?**

No. If an employee has an offer of health coverage from their employer that meets certain affordability and minimum value standards, the employee will not be eligible for a tax credit through the Marketplace. KEHP will ensure that plan(s) available for participating groups will meet the affordability and the minimum value tests. It is likely that not all plans offered through KEHP will meet the test for every employee, but at least one plan that meets both tests will be available for every employee. No employer action is required to ensure the coverage offered through KEHP meets the affordability and minimum value tests, provided the employer does not make any changes to the employer or employee contributions established by KEHP. If an employer group participating in KEHP offers employer or employee contributions different than those established by KEHP, the employer will need to conduct its own analysis to determine if the minimum essential coverage is affordable.

## **Model or Modified Notice**

### **What must employers deliver to employees?**

The model Notice contains two parts, Part A and Part B. Part A includes the required contents of the notice that must be given to employees. Part B contains specific information about the employer, the employee, and the health insurance offered by the employer. Part B is **optional**. Employers are not required to deliver Part B to employees.

### **Why is Part B included with the model Notice if it is not required?**

The application for purchasing insurance through the Marketplace requests information found in Part B of the model Notice. An employee seeking coverage through the Marketplace may seek answers to the questions in Part B from the employer. Each employer should be able to provide this information to its employees upon request. For this reason, Part B of the Notice accompanying these FAQs contains answers to Part B that would apply to all employers participating in the KEHP. Upon request by an employee, each employer will need to complete Part B with employer-specific information, including any employer-specific eligibility requirements, and return it to the employee. Again, Part B is not required to be included with Part A when delivering the Notice to employees.

### **Must employers use the model Notice?**

No. Technical Release No. 2013-02 regarding the model Notice specifically provides that an employer may use the model Notice or a modified version, provided the Notice includes the required contents.

### **Has the Personnel Cabinet modified the model Notice?**

Yes. The Personnel Cabinet modified Part A of the model Notice to provide information regarding Kentucky's Marketplace, **kynect**. Part B of the model Notice has been modified to include specific information about KEHP health insurance coverage and eligibility requirements.

### **Will employers need to amend the Notice further?**

The Notice accompanying these FAQs may be used by employers participating in KEHP. Employers may also choose to produce their own Notice. In any event, employers must be careful to ensure the Notice includes all required contents. (See FAQ on "required contents" above.)

With respect to Part B of the Notice, employers may need to add any employer-specific eligibility requirements that apply to their employees. Also, those sections requiring specific employer and employee information will need to be completed upon request. Note: The information in Part B is only required when requested by an employee seeking coverage through the Marketplace.

## Employer Notice Responsibilities

### Who is required to send the Notice?

All employers, regardless of the number of employees, to which the FLSA applies, are required to send the notice. The FLSA applies to federal, state, and local government agencies. Ensuring that each employee receives the Notice is an employer responsibility and not the responsibility of KEHP.

### Is an employer that offers health insurance coverage to employees required to provide the Marketplace Notice to the employees?

Yes.

### Who must receive the Notice?

The employer must deliver the Notice to all employees, regardless of part-time or full-time status and regardless of whether the employee is covered under the employer's health plan. Employers are NOT required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

### When must the Notice be given?

Regarding current employees, the Notice must be given not later than October 1, 2013. KEHP will include the Notice with open enrollment materials delivered to current employees covered through KEHP. Be advised that, due to the limited KEHP delivery, the Notice will **not** reach all employees such as part-time employees and those who are not KEHP members. That being the case and in order to comply with federal law, employers must send either the Notice produced by the Personnel Cabinet or the employer's own modified version of the Notice to current employees.

With respect to new employees, the Notice must be given at the time of hiring beginning October 1, 2013. Employers will be responsible for delivering the Notice to new employees hired after October 1, 2013.

### How must the Notice be delivered to the employee?

The Notice must be provided in writing and in a manner calculated to be understood by the average employee. It may be provided by first-class mail. The Notice may also be provided electronically if (1) the employee has the ability to effectively access documents furnished in electronic form at any location where the employee is reasonably expected to perform his or her duties as an employee and (2) access to the employer's electronic information system is an integral part of the employee's duties.

## Sources and Contact Information

### kynect

You may visit [kynect.ky.gov](http://kynect.ky.gov) for more information or contact **kynect** by phone at 1-855-4kynect.

### Department of Employee Insurance

You may visit [keh.ky.gov](http://keh.ky.gov) for more information or call 888.581.8834 or 502.564.1205.

**U.S. Department of Labor, Technical Release 2013-02** - at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>

### Marketplace Notice (Part A and Part B)